F. M. S. REPORTS

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

December 19, 1938.

LEE WOO ..... **Appellant.**

vs.

PUBLIC PROSECUTOR ..... **Respondent.**

[PAHANG MAGISTRATE'S CRIMINAL APPEAL No. 2 of 1938]

Rubber Regulation Enactment, No. 36 of 1936, S. 18 (iii)—possession of rubber not covered by coupons—seizure and confiscation.

The appellant, a licensed rubber dealer, was charged with and convicted of having in his possession of rubber in excess of the quantity authorised by Section 18 (iii) of the Rubber Regulation Enactment No. 37 of 1936. The excess rubber was ordered to be confiscated and destroyed by the Customs Department. It was admitted or proved that when the Rubber Regulation Inspector visited the appellant's premises, he found 10,157 lbs. of rubber for which they were no coupons and which on reference to the controller, was found not to be covered by any credit in the rubber export ledger. The appellant, however, stated that the Estate owners sent rubber to his premises by lorry with a view to negotiating a sale later the same day and that it was only when a price had been agreed upon that rubber coupons would be handed over. On these allegations the appellant based his arguments (1) that the rubber in question was not in his possession prior to the sale, and, alternatively, (2) that the rubber was in fact covered by coupons in the hands of the owner of the rubber.

Held, that the appellant received the rubber for storage, and not for sale, that in the absence of a written authority as provided by Section 25 (iii) (a) and (b) of the Enactment, the rubber must be treated as being in the appellant's possession for the purpose of Section 18 (iii), and that as he had no coupons, an offence had been committed.

An amount of rubber less than that found to be in excess was seized by the Controller nearly four weeks after the offence was committed.

Held, that the rubber which might be seized was the particular rubber which was in excess on the date of inspection and that the Magistrate's order for confiscation could not be supported and must be set aside.

MAGISTRATE'S CRIMINAL APPEAL.

K. K. Benjamin for the Appellant.

G. F. Draper, Deputy Public Prosecutor, for the Respondent.

Cur. Ad. Vult.

TERRELL, AG. C.J.—The appellant who is a licensed rubber dealer was charged with having in his possession or under his control on the 9th of July 1938, 10,157 lbs. of rubber in excess of the amount authorised by section 18(iii) of the Rubber Regulation Enactment No. 37/1936. The Appellant was convicted, and was fined $50. In addition the 10,157 lbs. of rubber in excess was ordered to be confiscated and destroyed by the Customs Department.

Section 18(iii) of the Enactment, which the appellant is charged with having contravened, reads as follows:—

> "No licensed dealer shall have in his possession or under his control any stocks of rubber exceeding in amount the stocks held by him at the close of business on the 31st day of May, 1934, together with any rubber covered by coupons or by credits in his name in the ledgers of the Controller or exceeding such amount as the Controller may from time to time determine and any rubber in excess of the amount authorised by this sub-section may be seized by the Controller or any officer authorised by him in that behalf and shall be forfeited and any existing export rights in respect of such excess rubber shall be extinguished."

It was admitted or proved that when the Rubber Regulation Inspector visited the Appellant's premises, he found 10,157 lbs. of rubber for which there were no coupons and which, on reference to the Controller, was found not to be covered by any credit in the rubber export ledger. The appellant, however, alleged that the estate owners sent rubber to his premises by lorry with a view to negotiating a sale later the same day, and that it was only when a price had been agreed that a sale was effected, and then the relative rubber coupons would be handed over.

The appellant accordingly argued:—

1. that the rubber in question was not in his possession or under his control prior to the sale, and alternatively,
2. that the rubber was in fact covered by coupons in the hands of the owner of the rubber.

The learned Magistrate appears to have accepted this explanation of the facts, as he treated it merely as a technical offence, but he held that in law the explanation provided no defence, and that the submissions above referred to would defeat the object of the section. The appellant was accordingly convicted.

The same arguments were raised on the appeal. On this part of the case the whole matter turns on the interpretation to be given to the words 'possession' and 'control'.

Now, it is argued by the appellant that the Enactment being a penal statute should be strictly construed, and that is no doubt the case, but there is another rule of construction which is of no less importance and applies to the construction of statutes whether penal or otherwise, and the rule is that that sense of the words is to be adopted which best harmonizes with the context, and promotes to the fullest manner the policy and objects of the legislature. On this principle words have some times been given a meaning wider than etymologically belongs, or is popularly attached to them in order to carry out the legislative intent, or, in the words of Lord Coke, in order "to suppress the mischief and advance the remedy" (*Maxwell's* Interpretation of Statutes 8th edition, page 241).

The object of the Enactment is strictly to control the production sale and export of rubber in accordance with an international convention. In order that the arrangements for control may

be carried out fairly and equitably it is essential that all production and sale in excess of that permitted under the ruling quota be strictly checked, and for this purpose the office of Controller of Rubber has been established with a staff of Deputy Controller and inspectors under him. It would appear to be essential that at any given moment the inspectors must be in a position to examine stocks held by an owner or dealer for the purpose of satisfying themselves that the rubber which they find is covered either by the necessary ledger credits or by owners' coupons. If the argument of the appellant were valid, it would clearly be impossible to keep a proper check. An owner's stocks might be inspected and found to be properly covered by coupons. The same day a dealer might have in his godown rubber from the same owner not covered by coupons. But if he were allowed to produce coupons later, he could easily go into the market and buy them, notwithstanding the fact that the same coupons might already have been produced to cover an owner's rubber. If that happened the control would clearly not be complete, and the objects of the legislature might be defeated.

Taking these matters into consideration I think that 'possession' must be 'physical possession.' Possession some times implies ownership, and involves a power of disposition. I do not think that this is the sense in which the word is used. Or, perhaps, one say that in the absence of definite evidence to the contrary 'possession' for the purpose of the sections presumes ownership. This construction is, I think, assisted by section 25 of the Rubber Supervision Enactment (No. 10/37) which provides that:—

> "no licensee.....shall receive any rubber except upon delivering to him of a written authority for the sale, treatment, storage or packing thereof".

Assuming that the evidence given by the appellant is to be accepted, he was not receiving the rubber for sale but for storage and he should have had a written authority as provided by section 25(iii) (a) & (b) of the Rubber Supervision Enactment. If such a document had been forthcoming, the nature of the licensee's possession would have been free from doubt, and there would have been no difficulty in tracing the coupons for the rubber in question, but in the absence of such authority, I think that the rubber must be treated as being in the appellant's possession for the purpose of section 18(iii), and as admittedly he had no coupons, an offence had been committed. The appeal against the conviction is, therefore dismissed.

The confiscation of the rubber, however, raises a different and much more serious question. The order for confiscation by the learned Magistrate was clearly made under section 29(i) of the Enactment which reads:—

> "Whenever any person is convicted for an offence against any of the provisions of this Enactment or of the rules made thereunder any rubber or coupons seized in respect of such offence may be forfeited by order of the Magistrate."

It is quite clear that no order of confiscation can be made except in respect of rubber which has been seized, and the seizure is effected under the latter part of section 18(iii) which has been set out above. In pursuance, or purported pursuance, of that sub-section the Controller on the 22nd of July 1938 issued the following authority to one of his officers:—

> "Mr. E. H. Lawrence, an officer appointed under section 3 of the Rubber Regulation Enactment No. 37 of 1936 is hereby authorised to seize 10,157 (ten thousand one hundred and fifty seven) pounds of rubber found without the requisite coupons or other export rights on 7th July, 1938 by the said Mr. E. H. Lawrence on the licensed premises of Lee Woo and Sockalingam Chettiar, licensed rubber dealer, 4/38 Kuantan, trading as Kwong Ning Co., at 83 Wall Street, Kuantan in contravention of the provisions of the Rubber Regulation Enactment No. 37 of 1936 section 18(iii)."

This officer gave evidence to the effect that on receipt of Exhibit 'E' he went to the appellant's premises on the 3rd of August that is nearly four weeks after the offence was committed, and seized, not 10,157 lbs. of rubber, but 6,462 lbs., which was apparently all that he could find. He very fairly admitted in the cross-examination that he imagined that this was not the rubber which he saw in the shop on the 7th of July. The order of the Magistrate is clearly wrong in ordering the confiscation of 10,157 lbs. of rubber, because only 6,462 lbs. were seized; and the further question arises whether the Controller can seize anything except the physical rubber which was in excess on the day of the offence. If the rubber could not be seized under section 18(iii), *a fortiori* it could not be confiscated under section 29(i).

But the learned Deputy Public Prosecutor put the case in rather a different way. He argued that the order for confiscation by the learned Magistrate was merely declaratory, and that the Controller was empowered by law to authorise the seizure of rubber to the extent of 10,157 lbs., and that upon seizure the rubber was forefeited (which presumably means the same thing as confiscated). The learned Deputy Public Prosecutor argued that if a dealer had excess stocks not covered by ledger credits or coupons, the Controller could at any time seize and forfeit an amount equivalent to such excess, whether or not the licensee had been convicted of any offence, and whether or not it was the same rubber.

Admittedly only 6,462 lbs. has so far been forfeited as this is the only amount that has been seized, but, if the argument submitted on behalf of the Controller is correct, the balance of the 10,157 lbs. can be seized at any time in execution of the directions contained in Exhibit 'E' and if seized, will be automatically forfeited. The section as it stands is certainly unusual and difficult to construe, but if it were given the interpretation for which the learned Deputy Public Prosecutor contends, it would result in giving the Controller arbitrary powers which are not parallelled in any legislation to which I have been referred.

It was argued that the section should be given a 'beneficial' construction, that is to say such a construction as would make it easier for the Controller to carry out the objects which the legislature had in view. It was pointed out that the Inspector could never be certain that a dealer had any excess rubber, as it might be covered by export credits, and to ascertain this a reference to the ledger was necessary. Accordingly there must necessarily be an interval of several days before it could be ascertained that an offence had been committed. In the meantime the rubber in question might be, and probably would have been, disposed of. Unless, therefore, the Controller could seize any 10,157 lbs. of rubber, the power given to the Controller would be nugatory.

In support of these arbitrary powers it was urged that the Federated Malay States was under a strict obligation to carry out an international convention, that such arbitrary powers were essential, and that accordingly the Controller's powers of seizure and forfeiture should be given the widest possible interpretation for the purpose of promoting the policy and objects of the legislature on the principles referred to above. I may say at once that I am not impressed by this last argument. Besides rubber, tin and tea are also controlled in the Federated Malay States, and I was not referred to any provision at all similar to section 18(iii). A more important comparison is the Colony Rubber Regulation Ordinance, which was passed for the purpose of giving effect to the same international convention so far as concerns rubber in the Colony. Under section 16 (2) of the Colony Ordinance (Cap. 163), a dealer in possession of excess stocks is guilty of an offence under the Ordinance, and under section 16 (5) every person found guilty of an offence is liable on conviction to a fine or imprisonment or both

> " and in addition *such excess rubber* may be seized by the Controller and shall be forfeited to the Government and any existing export rights in respect of such excess rubber shall be extinguished."

Under the Colony Ordinance therefore the powers of the Controller are only exercisable on conviction, and only the rubber in respect of which the offence was committed can be seized and confiscated. I can only conclude, therefore that the arbitrary powers claimed for the Controller in the Federated Malay States are quite unnecessary for carrying out the international convention. Section 18 (iii) therefore requires to be interpreted as it stands without any predilection one way or the other.

I feel no doubt that in its ordinary interpretation the Sub-section means that the rubber which may be seized is the particular rubber which was in excess on the day of the inspection. It may be pointed out that under section 29 of the Enactment, as under section 30 of the Colony Ordinance, rubber in respect of which a suspicion exists that an offence has been committed may be seized.

If this procedure had been adopted and an offence had subsequently been proved, the identity of the rubber would have been fully established, but I cannot agree that the Controller can exercise his powers subsequently, when the rubber can no longer be identified. In fact until the matter came before the Court I doubt whether the Controller himself imagined that he had the powers which are now claimed on his behalf, since in Exhibit 'E' he authorises Mr. Lawrence to seize 10,157 lbs. of rubber "being rubber found without the requisite coupons or other export rights on the *7th of July 1938*", that is to say he was to seize the specific excess rubber which was found on that particular date. Nevertheless the learned Deputy Public Prosecutor asks the Court to read the words "any rubber in excess of the amount authorised by this sub-section may be seized" as if they read "rubber, to the amount of the excess ascertained on the date of any inspection, may be seized at any time". That would in effect be rewriting the section, and is inadmissible as a method of construction (see *per* Lord Hewart, L.C.J. in *Chajutin* v. *Whitehead*, (1938) A.E.R. Vol. 1 K.B.D. page 159, at page 162).

In my opinion, therefore, the learned Magistrate's order for confiscation cannot be supported and must be set aside. Appellant's counsel asked for an order under section 407(ii) of the Criminal Procedure Code, that the rubber which had been seized be delivered to the appellant. In answer to this the learned Deputy Public Prosecutor argued that the seizure and forfeiture resulted from the act of the Controller, and that the Magistrate's order for confiscation was superfluous, or at least merely declaratory. He suggested, therefore, that the appellant should be left to take civil proceedings against the Controller. This was somewhat disingenuous, as under section 36 of the Enactment no suit against the Controller could succeed unless the plaintiff could satisfy the Court that the Controller had acted maliciously or negligently and without reasonable

or probable case. No one can suggest that the Controller has acted otherwise than in pursuance of the duties and in exercise of the powers which he conceived were conferred upon him by law, and there can be little doubt that, so far as concerns the present seizure, he would be immune from any proceedings at law. Whether he would enjoy the same immunity if he seized rubber under section 18 (iii) in defiance of the interpretation placed upon the subsection by the Supreme Court is not a matter which I am now called upon to decide. The only question that remains for decision is whether the power to dispose of the rubber in question can properly be exercised on the hearing of this appeal. The latter part of section 407 (ii) of the Criminal Procedure Code reads:—

> "The power herein conferred upon the Court.....shall be exercised subject to any special provisions relating to forfeiture, confiscation, destruction or delivery contained in the Enactment under which the conviction was had".

Whatever may be the powers of seizure and forfeiture conferred on the Controller by section 18 (iii), I have found that the seizure of the 6,462 lbs. of rubber on the 3rd of August 1938, was not in accordance with that sub-section, and there are accordingly no "special provisions as to the forfeiture" which would prevent the Court from making an order under section 407 (ii) of the Criminal Procedure Code.

I direct, therefore, that the rubber in question be returned to the appellant.

Appeal partly allowed and partly dismissed.

[APPELLATE CRIMINAL JURISDICTION]

RAJA MUSA, Ag. J.

November 5, 1938.

UTAM SINGH.....Appellant

vs.

PUBLIC PROSECUTOR.....Respondent

[NEGRI SEMBILAN MAGISTRATE'S CRIMINAL APPEAL No. 21 of 1938]

Road Traffic Enactment, S. 33 (i) (a)—requirements as to information to be given thereunder.

Under Section 33 (1) (a) of the Road Traffic Enactment, the request for information as to the identity and address of the person who was driving a motor vehicle at a specified time must be made to a Police Officer not below the rank of Inspector. If the request is properly made, it is immaterial to whom the information is given if it is given with a view to its communication to the proper police officer.

MAGISTRATE'S CRIMINAL APPEAL.

E. Jeff for the Appellant.

G. F. Draper, Deputy Public Prosecutor for the Respondent.

Cur. Ad. Vult.

RAJA MUSA, AG. J.—In this case both learned Counsel consented to my framing charges under the provisions of section 33 (i) (a) of the Road Traffic Enactment and treating the evidence on record as if the trial had been under those charges. I could see no objection to such a course being adopted.

On that basis Mr. Jeff for Utam Singh argued that there can be no prosecution under section 33 (i) (a) of the Road Traffic Enactment unless the information required by the section is given to a police officer not below the rank of Inspector.

In this case it was admitted that the request for information was made by a police officer not below the rank of Inspector and that the information was in fact given to the Chief Clerk of the Traffic Department, Seremban.

To my mind all that section 33 (i) (a) requires is that the request for the information must be made by a police officer not below the rank of Inspector. It does not specify to whom that information is to be given. If therefore the request is properly made it is immaterial to whom the information is given if it is given with a view to its communication to the proper police officer. But the question as to whom the information is given is, to my mind, entirely immaterial. The request in this case was admittedly made to Utam Singh by a police officer not below the rank of Inspector. Utam Singh chose to give his information to the Chief Clerk. Surely it is not open to him to say that the information he had given to the Chief Clerk was invalid under the section because the effect of that is to show that he has not given any information at all and he has therefore failed to comply with the requirement which is an offence. To my mind he is estopped from denying the competency of the clerk to receive the information if he himself chose to give it to him.

Upon the charges before me I consider that section 33 (i) (a) means this:—

> A police officer not below the rank of Inspector may require the owner of a motor vehicle to give information as to the identity and address of the person who was driving the said motor vehicle at any specified time. That owner is under a legal obligation to supply the information. If he does not he commits an offence unless he can show that he did not know and could not with reasonable deligence have ascertained the information required. The onus is on the owner to prove that he did not know and that he had exercised reasonable diligence.

In the case before me the evidence of the Chief Clerk shows that in answer to the original requests for information Utam Singh came and said that he had been the driver. This was shown to be incorrect.

Information required under the section must be true and correct. To give incorrect informa-